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SIRIM Bhd v Aini Suzana bt Hj Ariffin

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HIGH COURT (KUALA LUMPUR) — CIVIL SUIT
NO 22NCVC-543-09 OF 2013
ROZANA ALI J
31 MARCH 2021

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Contract — Scholarship agreement — Breach — Defendant required to serve plaintiff after completing studies — Whether defendant had breached the agreement when she failed to continue to be employed with the plaintiff — Whether plaintiff had breached the agreement by assigning defendant to a different position — Contracts Act 1950 ss 2, 5 & 74

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This was the plaintiff's claim against the defendant for breach of a scholarship agreement ('the SA') dated 10 September 2007 for refusing or failing to continue her employment with the plaintiff for a specified bonded period of six years upon completion of her PhD programme in United Kingdom. The defendant had commenced employment with the plaintiff on 5 November 1996 with her last designation being senior general manager (SGM), before leaving to further her PhD in United Kingdom. The defendant applied for a scholarship from the plaintiff to pursue a PhD in University of Manchester, United Kingdom. Upon the defendant's successful application, the plaintiff and the defendant executed the SA for the purpose of the PhD programme and a scholarship provided by the plaintiff. The defendant thereafter proceeded to pursue the PhD and duly obtained her doctorate on 31 October 2011. The plaintiff agreed to provide leave and the scholarship to the defendant to facilitate her further education, in accordance with the terms and conditions provided in the offer letter by the plaintiff. The defendant was required to serve the plaintiff for six years from the date of re-commencement of employment upon completion of her PhD course. In the event that the defendant ceased employment or resigned, the plaintiff would be entitled to terminate the SA with immediate effect by giving notice to the defendant and the defendant would then be liable to compensate the plaintiff for the costs involved relating to the scholarship as well as damages and interest. Pursuant to restructuring of the company, the plaintiff decided to set up the Technology Intelligence Section Business and Commercialisation Incubation Centre, Technology Transfer ('TCSC'). Upon the defendant's return to Malaysia, she was appointed as a fellow consultant in TCSC. The defendant, however, was dissatisfied and rejected the assigned appointment on the ground that the position offered was entirely different. It was a demotion from her previous position as SGM and did not match her PhD qualification. By a letter dated 19 February 2013 to the plaintiff, the defendant informed the plaintiff of her

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intention to cease employment effective from 20 February 2013. As a direct consequence of the defendant's decision to cease employment with the plaintiff, the plaintiff claimed that the defendant had breached the terms and conditions of the SA as the defendant had failed to serve the plaintiff for six years from the date of completion of her PhD, pursuant to the terms of the SA. The plaintiff claimed for damages in the sum of RM1,074,473.61 together with interests and costs. The defendant counterclaimed for damages on the basis that the plaintiff had breached the fundamental terms and conditions of her contract of employment and was constructively dismissed. The defendant claimed damages for being downgraded, humiliated, discriminated, and her car, petrol and toll charges which she previously enjoyed when she held the post as SGM. The issues raised in this suit were: (a) whether the defendant had breached the SA when she failed to continue to be employed with the plaintiff for six years after she had completed her PhD; and (b) whether the plaintiff had breached the SA when the plaintiff assigned the defendant as a fellow consultant from her earlier position as an SGM.

Held, allowing the plaintiff's claim with costs of RM40,000 and dismissing the defendant's counterclaim:

- (1) The defendant admitted that she was happy and had been given the responsibility to be in charged as the caretaker of the whole centre and ultimately to develop it even though she raised her concern that she did not have sufficient working experience and not qualified for the job as fellow consultant. However, throughout the defendant's tenure as a fellow consultant there were no records of her raising any objection in respect of her position. Only after 14 months and before the expiry of the bond, the defendant left her employment and ended her contract of employment on the basis of constructive dismissal. There was inconsistency in her evidence where on one hand she said that she was not qualified for the job as fellow consultant but on the other hand in her letter dated 19 March 2013, she felt that she was overqualified, and the post did not match her paper qualification. Her inconsistency in her complaint did not align with her contention that the plaintiff had downgraded her post and had caused humiliation. From the evidence and facts, the court was of the view that the defendant was satisfied and had accepted the post which was the same level and grade with the previous post of SGM. A change in the line of reporting was not a basis for coming to a conclusion that it was a demotion from SGM to her present post (see paras 21–22).
- (2) The court had scrutinised cl 3.4 of the SA, which was agreed and accepted by both parties, that the defendant could be placed in any position so long as such position was not lower than position Grade 27. The defendant knew very well that she had to serve the plaintiff for six years after the completion of her PhD programme where both parties had

- A willingly entered into the contract on this basis without any element of compulsion at the outset. Having said the above, the court found that there was no breach on part of the plaintiff in respect of cl 3.4 of the SA. Clause 3.4 of the SA was the relevant contractual provision and was sufficiently clear to lead to the conclusion that the defendant had
- B breached the SA and therefore was liable, in accordance with the terms of the SA, to pay the sums expended on her by the plaintiff during the duration of her period of study as stipulated under cl 8.1(h) of the SA (see para 23).
- C (3) The defendant agreed during cross-examination that she ended her employment with the plaintiff on 20 February 2013 was less than six years, contrary to cl 3.4 of the SA where she was aware of the consequences of the breach. When the plaintiff spent substantial amount of money including a fully paid salary for the defendant to pursue her
- D PhD, it was the intention of the plaintiff to have a qualified employee in a certain field for the benefit and interest of the plaintiff. The principal reason for the grant of the scholarship to the defendant was based upon a firm expectation that the defendant would be hired, and she will perform her obligations for the entire period specified in the SA. The defendant
- E was benefited by the knowledge and expertise acquired. It was then the expectation of the plaintiff, that in return, the defendant would continue to be employed with the plaintiff for a specified agreed duration and contribute her knowledge in enhancing the plaintiff's business. Thus, if the defendant did not fulfill her obligation under the SA, all the effort and expenses by the plaintiff became futile and failed to achieve the
- F ultimate aim (see paras 25–26).
- (4) As a direct consequence of the defendant's breach under the SA, the plaintiff was entitled to claim and to be compensated from the defendant for all the monies spent or invested. In the present case, the court found that that the liability of the defendant was to pay 'the whole amount expended by the appropriate authority under the agreement' as stipulated in s 5(b)(i) of the Contract (Amendment) Act 1976. It was clear that the plaintiff was able to claim monies spent on the defendant under the SA. Thus, the court found that on a balance of probabilities, the plaintiff had
- G established its case against the defendant and the defendant had failed to prove her counterclaim (see paras 27 & 29–30).
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[Bahasa Malaysia summary]

- I Ini adalah tuntutan plaintif terhadap defendan kerana melanggar perjanjian biasiswa ('PB') bertarikh 10 September 2007 kerana enggan atau gagal meneruskan pekerjaannya dengan plaintif untuk tempoh selama enam tahun selepas tamat program PhD di United Kingdom. Defendan telah memulakan pekerjaan dengan plaintif pada 5 November 1996 dengan jawatan terakhirnya sebagai pengurus besar kanan (PBK), sebelum ke United Kingdom untuk

melanjutkan pelajaran dalam bidang PhD. Defendan memohon biasiswa daripada plaintiff untuk meneruskan pengajian PhD di University of Manchester, United Kingdom. Setelah permohonan defendan berjaya, plaintiff dan defendan melaksanakan PB bagi tujuan program PhD dan biasiswa yang disediakan oleh plaintiff. Defendan kemudiannya meneruskan pengajian PhD dan memperoleh ijazah kedoktoran pada 31 Oktober 2011. Plaintiff bersetuju untuk memberikan cuti dan biasiswa kepada defendan pendidikan lanjutnya, menurut terma dan syarat yang disediakan dalam surat tawaran oleh plaintiff. Defendan dikehendaki berkhidmat dengan plaintiff selama enam tahun dari tarikh mula semula pekerjaan selepas tamat kursus PhD beliau. Sekiranya defendan berhenti kerja atau meletakkan jawatan, plaintiff berhak menamatkan PB berkuat kuasa serta-merta dengan memberi notis kepada defendan dan defendan kemudiannya akan bertanggungjawab untuk membayar pampasan kepada plaintiff bagi kos-kos yang terlibat berkaitan dengan biasiswa serta ganti rugi dan faedah. Berikutan penstrukturan semula syarikat, plaintiff memutuskan untuk menubuhkan Bahagian Perisikan Teknologi Pusat Inkubasi Perniagaan dan Pengkomersilan, Pemindahan Teknologi ('TCSC'). Setelah defendan kembali ke Malaysia, beliau telah dilantik sebagai konsultan di TCSC. Walau bagaimanapun, defendan tidak berpuas hati dan menolak pelantikan yang diberikan dengan alasan bahawa jawatan yang ditawarkan adalah berbeza. Kedudukannya telah diturunkan sebelum ini sebagai SGM dan tidak sepadan dengan kelayakan PhD beliau. Melalui surat bertarikh 19 Februari 2013 kepada plaintiff, defendan memaklumkan kepada plaintiff tentang hasratnya untuk meletak jawatan berkuat kuasa mulai 20 Februari 2013. Akibat defendan untuk menghentikan perbuatan defendan yang meletakkan jawatan kepada plaintiff, defendan telah melanggar terma dan syarat di dalam PB tersebut dan defendan telah gagal untuk berkhidmat kepada plaintiff selama enam tahun dari tarikh PhD, mengikut terma SA. Plaintiff menuntut ganti rugi berjumlah RM1,074,473.61 berserta faedah dan kos. Defendan membuat tuntutan balas untuk ganti rugi bahawa plaintiff telah melanggar terma dan syarat asas kontrak pekerjaannya dan telah diberhentikan secara konstruktif. Defendan mendakwa ganti rugi kerana diturunkan pangkat, dihina, didiskriminasi, dan elaun kereta, petrol dan caj tol yang sebelum ini diperoleh ketika memegang jawatan itu sebagai PBK. Isu-isu yang dibangkitkan dalam saman ini adalah: (a) sama ada defendan telah melanggar PB apabila dia gagal untuk terus bekerja dengan plaintiff selama enam tahun selepas dia telah menamatkan PhDnya; dan (b) sama ada plaintiff telah melanggar PB apabila plaintiff menugaskan defendan sebagai konsultan daripada jawatan sebelum ini sebagai PBK.

Diputuskan, membenarkan tuntutan plaintiff dengan kos sebanyak RM40,000 dan menolak tuntutan balas defendan:

- (1) Defendan mengakui bahawa dia berpuas hati dan telah diberi tanggungjawab untuk bertanggungjawab sebagai penjaga keseluruhan

- A pusat dan akhirnya untuk membangunkannya walaupun dia menimbulkan kebimbangan bahawa dia tidak mempunyai pengalaman kerja yang mencukupi dan tidak layak untuk pekerjaan sebagai rakan perunding. Walau bagaimanapun, sepanjang tempoh defendan sebagai rakan perunding tidak ada rekod beliau membangkitkan apa-apa bantahan berkenaan dengan kedudukannya. Hanya selepas 14 bulan dan sebelum tamat tempoh bon, defendan meninggalkan pekerjaannya dan menamatkan kontrak pekerjaannya atas dasar pemecatan konstruktif. Terdapat ketidakselarasan dalam keterangannya di mana di satu pihak dia berkata bahawa dia tidak layak untuk pekerjaan sebagai rakan perunding tetapi sebaliknya dalam suratnya bertarikh 19 Mac 2013, dia merasakan bahawa dia telah berlebihan, dan jawatan itu tidak sepadan dengan kelayakan kertasnya. Ketidakkonsistenan beliau dalam aduannya tidak sejajar dengan perbalahannya bahawa plaintif telah menurunkan jawatannya dan telah menyebabkan penghinaan. Daripada keterangan dan fakta, mahkamah berpendapat bahawa defendan berpuas hati dan telah menerima jawatan itu yang sama dengan jawatan PBK sebelumnya. Perubahan dalam baris pelaporan bukanlah asas untuk membuat kesimpulan bahawa ia adalah satu penurunan daripada PBK kepada jawatan sekarang (lihat perenggan 21–22).
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- E (2) Mahkamah telah meneliti klausa 3.4 PB, yang telah dipersetujui oleh kedua-dua pihak, bahawa defendan boleh diletakkan dalam mana-mana kedudukan selagi kedudukan itu tidak lebih rendah daripada kedudukan Gred 27. Defendan tahu bahawa dia perlu berkhidmat kepada plaintif selama enam tahun selepas selesai program PhD di mana kedua-dua pihak telah secara sukarela memasuki kontrak atas dasar ini tanpa sebarang unsur paksaan pada awalnya. Setelah itu, mahkamah mendapati bahawa tiada pelanggaran pada sebahagian daripada plaintif berkenaan dengan klausa 3.4 PB. Klausa 3.4 PB adalah peruntukan kontrak yang cukup jelas untuk membawa kepada kesimpulan bahawa defendan telah melanggar PB dan oleh itu, menurut terma PB, harus membayar jumlah yang dibelanjakan kepadanya oleh plaintif dalam tempoh pengajiannya seperti yang ditetapkan di bawah klausa 8.1(h) PB (lihat perenggan 23).
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- H (3) Defendan bersetuju semasa pemeriksaan balas bahawa dia menamatkan pekerjaannya dengan plaintif pada 20 Februari 2013 yang mana kurang dari enam tahun yang bercanggah dengan klausa 3.4 PB di mana dia menyedari akibat pelanggaran itu. Apabila plaintif membelanjakan sejumlah wang yang banyak termasuk gaji yang dibayar sepenuhnya untuk defendan meneruskan PhDnya, adalah menjadi hasrat plaintif untuk mempunyai pekerja yang berkecayaan dalam bidang tertentu untuk faedah dan kepentingan plaintif. Sebab utama pemberian biasiswa kepada defendan adalah berdasarkan anggapan bahawa defendan akan dilantik untuk bekerja dan akan melaksanakan kewajipannya untuk keseluruhan tempoh yang dinyatakan dalam PB. Defendan telah
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mendapat manfaat daripada pengetahuan dan kepakaran yang diperolehi. Pada masa itu, plaintif berharap sebagai balasan, defendan akan terus bekerja dengan plaintif untuk tempoh yang dipersetujui tertentu dan menyumbang pengetahuannya dalam meningkatkan perkhidmatan plaintif. Oleh itu, jika defendan tidak memenuhi kewajibannya di bawah PB, segala usaha dan perbelanjaan oleh plaintif menjadi sia-sia dan gagal mencapai matlamat utama PB tersebut (lihat perenggan 25–26).

- (4) Akibat pelanggaran defendan di bawah PB, plaintif berhak untuk menuntut dan diberi pampasan daripada defendan untuk kesemua wang yang dibelanjakan atau dilaburkan. Dalam kes ini, mahkamah mendapati bahawa liabiliti defendan adalah untuk membayar ‘keseluruhan amaun yang dibelanjakan oleh pihak berkuasa yang sesuai di bawah perjanjian’ seperti yang termaktub dalam s 5(b)(i) Akta Kontrak (Pindaan) 1976. Adalah jelas bahawa plaintif dapat menuntut wang yang dibelanjakan untuk defendan di bawah PB. Oleh itu, mahkamah mendapati melebihi imbalan kebarangkalian, plaintif telah berjaya membuktikan kesnya terhadap defendan dan defendan telah gagal membuktikan tuntutan balasnya (lihat perenggan 27 & 29–30).]

Cases referred to

CIMB Bank Bhd v Anthony Lawrence Bourke & Anor [2019] 2 MLJ 1; [2019] 2 CLJ 1, FC (refd)

Dato’ Sivananthan a/l Shanmugam v Artisan Fokus Sdn Bhd [2016] 3 MLJ 122; [2015] 2 CLJ 1062, CA (folld)

Gimstern Corporation (M) Sdn Bhd & Anor v Global Insurance Co Sdn Bhd [1987] 1 MLJ 302, SC (refd)

Golden Vale Gold Range & Country Club Sdn Bhd v Hong Huat Enterprise Sdn Bhd (Airport Auto Centre Sdn Bhd & Anor, third party and another appeal) [2008] 4 MLJ 839; [2008] 6 CLJ 31, CA (refd)

Hadley and Another v Baxendale and Others (1854) 156 ER 145 (refd)

Legislation referred to

Contracts Act 1950 s 74(1)

(*Bodipalar Ponnudurai De Silva*) for the plaintiff.
(*Kanesalingam & Co*) for the defendant.

Rozana Ali J:

INTRODUCTION

[1] The plaintiff claim against the defendant for breach of a scholarship agreement (‘SA’) dated 10 September 2007 for refusing or failing to continue

A her employment with the plaintiff for a specified bonded period of six years upon completion of her PhD programme in United Kingdom.

[2] The plaintiff's claims against the defendant are as follows:

- B (a) damages to the sum of RM1,074,473.61;
(b) interest at the rate of 5%pa on the full judgment sum from the date of judgment until the date of realisation of the full judgment sum;
(c) costs; and
C (d) any further and other relief that this honorable court deems fit to grant.

[3] The defendant counterclaim for damages on the basis that the plaintiff has breached the fundamental terms and conditions of her contract of employment and was constructively dismissed. The defendant claimed damages pursuant to cl 10.4 of the Terms and Conditions of Service for the reason that she has been downgraded, humiliated, discriminated her car, petrol, toll charges which she previously enjoyed when she holds the post as senior general manager ('SGM').

E BACKGROUND FACTS

[4] The plaintiff, SIRIM Bhd is a company incorporated in Malaysia which the defendant in this case had commenced employment with the plaintiff on 5 November 1996 with her last designation being SGM with Position and Staffs Grade 27, before leaving to further her PhD in United Kingdom.

[5] The defendant applied for a scholarship from the plaintiff to pursue a PhD in 'Effective Technology & Innovation Management Policies to be Competitive in a Globalised World' in University of Manchester, United Kingdom. Upon the defendant's successful application, the plaintiff and the defendant executed the SA for the purpose of the PhD programme and a Scholarship provided by the plaintiff. The defendant thereafter proceeded to pursue the PhD and duly obtained her doctorate on 31 October 2011.

H [6] The salient terms of the SA, inter alia, are as follows:

- I (a) the plaintiff agreed to provide leave and the scholarship to the defendant to facilitate her further education, in accordance with the terms and conditions provided in the offer letter by the plaintiff dated 15 March 2007;
(b) the defendant was required to serve the plaintiff for six years from the date of re-commencement of employment upon completion of her PhD course; and

(c) in the event that the defendant ceases employment or resigns, the plaintiff shall be entitled to terminate the agreement with immediate effect by giving notice to the defendant and the defendant shall be liable to compensate the plaintiff for the costs involved relating to the scholarship as well as damages and interest.

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[7] Pursuant to restructuring of the company which to take effect on 1 January 2013, the plaintiff decided to set up the Technology Intelligence Section Business and Commercialisation Incubation Centre, Technology Transfer ('TCSC'). Upon the defendant's return to Malaysia, she was appointed as a fellow consultant in TCSC and as caretaker effective from 14 November 2011. The defendant however was dissatisfied and rejected the assigned appointment on the ground that the position offered is entirely different. It is a demotion from her previous position as SGM and does not match her PhD qualification.

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[8] By a letter dated 19 February 2013 to the plaintiff, the defendant informed the plaintiff of her intention to cease employment effective from 20 February 2013. However, the plaintiff directed the defendant to report back to work via letter dated 27 February 2013 but the defendant by a letter to the plaintiff dated 28 February 2013 reaffirmed with her decision to cease employment with the plaintiff. The defendant then plead for constructive dismissal effective 20 February 2013.

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[9] As a direct consequence of the defendant's decision to cease employment with the plaintiff, the plaintiff claims that the defendant had breached the terms and conditions of the said scholarship agreement particularly in respect cl 3.4 of the SA as the defendant had failed to serve the plaintiff for six years from the date of completion of her PhD, pursuant to the terms of the said agreement.

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[10] Throughout the defendant's four years of the PhD programme, the plaintiff has spent RM1,336,297.84 for the defendant's education, living expenses, allowances, travels and salary which is RM701,114.84 for the expenses and the payout of salary of RM636,183. However, the plaintiff in its statement of claim only seek from the defendant for a sum of RM1,074,473.61 after having deducted RM261,824.23 being the defendant's salary for the duration of 14 months 11 days as fellow consultant.

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LIST OF WITNESSES

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[11] The plaintiff called two witnesses (PW1) Puan Julia bt Nik Jaafar, Senior Vice President, Group Human Resource of the plaintiff and (PW2) Puan Nesfunizan bt Zaini, Human Resource Executive of the plaintiff.

A [12] The defendant, herself, present as DW1.

ISSUES

B [13] The agreed issues to be tried is whether the plaintiff or the defendant has breached cl 3.4 SA. In other words;

- (a) whether the defendant has breached cl 3.4 SA when she failed to continue to be employed with the plaintiff for six years after she had completed her PhD; and
- C (b) whether the plaintiff has breached cl 3.4 SA when the plaintiff assigned the defendant as a fellow consultant from her earlier position as a senior general manager (SGR).

ANALYSIS AND FINDING

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E [14] I took note that the defendant's claim on constructive dismissal had already been disposed by Industrial Court Kuala Lumpur case vide No 28(14)/4-1412/13 where the court held that the defendant has failed to discharge her burden of proving that she was constructively dismissed by the plaintiff. On this basis I will not deal with the issue of constructive dismissal.

F [15] The Parties entered into a SA which was defined under s 2 Contract (Amendment) Act 1976 as any contract or agreement between an appropriate authority and any person ('scholar') with respect to, any scholarship, award, bursary, loan, sponsorship or appointment to a course of study, the provision of leave with or without pay, or any other facility, whether granted directly by the appropriate authority, or by any other person or body, or by any government outside Malaysia, for the purpose of education or learning of any description.

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H [16] The plaintiff's main contention that the defendant had breached the terms and condition of the SA in particular cl 3.4 therein when the defendant failed to serve the plaintiff for six years after completion of her PhD course. The defendant, on the other hand, contended that it was the plaintiff who had breached cl 3.4 SA when the plaintiff demoted the defendant from her previous position of SGR that she held before leaving for PhD to a post as fellow consultant. As such she claimed that she was constructively dismissed by the plaintiff and seek damages pursuant to cl 10.4 Terms and Conditions of Service.

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[17] The crux of the issues centered with cl 3.4 SA which reads as follows:

Pegawai terikat dan hendaklah terus berkhidmat dengan SIRIM selama enam (6) tahun mulai dari tarikh pegawai menamatkan pengajian tersebut (sama ada dengan jayanya ataupun tidak) atau sekiranya dia mengikuti pengajian tersebut diluar

Malaysia, mulai dari tarikh pegawai kembali ke Malaysia, dalam sesuatu jawatan dan pangkat yang tidak rendah dari yang disandangnya sebelum ia mula pengajian.

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[18] I am guided by the Court of Appeal in *Dato' Sivananthan all Shanmugam v Artisan Fokus Sdn Bhd* [2016] 3 MLJ 122; [2015] 2 CLJ 1062, where the court states that:

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[31] There remains the last issue raised by the appellant that requires our consideration. Based on the statement of defence and the affidavits of the appellant filed in relation to the O 14A application, it is quite clear that the respondent did not part with a single cent and that the payment of the sum RM2.3m to Cosmotine was in fact effected by HTF. Both the appellant and the respondent had entered into the agreement agreeing on certain terms. *In law, parties are bound by the terms of the contract that they have entered into and likewise in this case, the rights and obligations of the parties are governed by the agreement.* The intentions of the parties are to be gathered from the language used. They are presumed to have intended what they said see (*Michael C Solle v United Malayan Banking Corp Bhd* [1986] 1 MLJ 47; [1984] 1 CLJ 151; [1984] 1 CLJ Rep 267). *The duty of the court is to give effect to the clear intention of the parties as expressed in the agreement. If the words are clear, unambiguous and in unmistakable language, there is very little the court has to do.* The court must give effect to the plain meaning of the words however much it may dislike the result (*Setapak Heights Development Sdn Bhd v. Tekno Kota Sdn Bhd* [2006] 2 CLJ 337) (Emphasis added.)

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[19] The Federal Court in *CIMB Bank Bhd v Anthony Lawrence Bourke & Anor* [2019] 2 MLJ 1; [2019] 2 CLJ 1:

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[26] We agree with the defendant that parties are bound by the terms of the contract which they entered into and that it is the court's duty to give effect to the clear and plain meaning of the words in the said clause. That is quite trite.

[27] The law recognises the principle of freedom of contract. Parties to a contract are free to determine for themselves what their obligations are. As Sir George Jassel MR said in *Printing and Numerical Registering Company v Sampson* (1875) LR 19 Eq 462 at 465:

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... men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by courts of justice. Therefore, you have this paramount public policy to consider — that you are not lightly to interfere with this freedom of contract.

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[20] Having said the above, there were also no disputes as to the SA entered by both parties and the defendant in fact did not complete the requisite of six years bond period with the plaintiff. On this premise, what left to be determined is whether there was a breach in the SA when the plaintiff assigned the defendant to the position as fellow consultant, as claimed by the defendant

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A is a lower grade than from her previous position as SGM held by the defendant prior her PhD course.

B [21] The defendant upon her return from the PhD programme, accepted and reported duty as a fellow consultant at Technology Commercialisation Service Centre where her position changed from Management to Technical ladder. As explained by PW1, the SGM position on the Management ladder is equivalent to that of the fellow consultant on the Technical ladder, since both are at the same level as Grade 27 but with different job descriptions and incentives. The defendant's position of Grade 27 was maintained when the plaintiff appointed her as fellow consultant. With this new position, she was tasked with the decision making and to utilise her expert knowledge in Effective Technology & Innovation Management Policies. The defendant in her evidence admitted that she was happy and had been given the responsibility to be in charged as the caretaker of the whole centre and ultimately to develop it even though she raises her concern that she did not have sufficient working experience and not qualified for the job as fellow consultant. However, throughout the defendant tenure as a fellow consultant there were no records of her raising any objection in respect of her position. Only after 14 months and before the expiry of the Bond, the defendant left her employment and ended her contract of employment on the basis of constructive dismissal. I also observed that there is inconsistency in her evidence where on one hand she said that she is not qualified for the job as fellow consultant but on the other hand in her letter dated 19 March 2013, she felt that she was over qualified and the post does not match her paper qualification. To my mind, her inconsistency in her complaint does not align with her contention that the plaintiff has downgraded her post and had cause humiliation.

G [22] The defendant contended that the post as fellow consultant is entirely different and a demotion from her previous position as SGM as she was required to report to one Puan Goay Peck Sim, who held the position of Grade 25, which is of a lower grade. From the evidence and facts before me, I am of the view that the defendant was satisfied and has accepted the post which is the same level and grade with the previous post of SGM. A change in the line of reporting, to my view, is not a basis for coming to a conclusion that it was a demotion from SGM to her present post. The evidence showed otherwise that she has worked independently when prepared her proposal to be presented to the MDC on 'Idea Generation and Discussions Rejuvenating SIRIM and Developing Implementation Plans to Accelerate and Enhance SIRIMS Technology Business' and she signed off the paper as fellow consultant. Thus, the issue of demotion or lower position does not arise here. Therefore, without any other evidence to say otherwise, I am inclined to accept the evidence of the PW1 that the post of fellow consultant/caretaker is the same grade and level as the position of SGR.

[23] Having scrutinised cl 3.4 SA, which was agreed and accepted by both parties, that the defendant can be placed in any position so long as such position is not lower than position Grade 27. The defendant knew very well that she had to serve the plaintiff for six years after the completion of her PhD programme where both parties had willingly entered in the contract on this basis without any element of compulsion at the outset. Having said the above, I find that there was no breach on part of the plaintiff in respect of cl 3.4 SA. Clause 3.4 SA is the relevant contractual provisions and is sufficiently clear to lead to the conclusion that the defendant had breached the SA and therefore was liable, in accordance with the terms of the SA, to pay the sums expended on her by the plaintiff during the duration of her period of study as stipulated under cl 8.1(h) SA:

8.1 Sekiranya:-

...

[b] Pegawai berhenti daripada atau meletak jawatan dalam perkhidmatan SIRIM atau SIRIM berpendapat bahawa Pegawai tidak lagi sesuai untuk berkhidmat kepada SIRIM:

...

maka, dalam mana-mana hal yang sedemikian dan tanpa menjejaskan hak atau remedi lain SIRIM dibawah Perjanjian ini atau undang- undang, SIRIM berhak menamatkan dengan serta merta Perjanjian ini dengan memberi notis secara bertulis kepada Pegawai dan Pegawai hendaklah membayar kepada SIRIM keseluruhan biasiswa yang telah dibayar oleh SIRIM serta segala gantirugi, faedah dan kos atas dasar peguamcara klien yang ditanggung oleh SIRIM dalam masa tiga puluh (30) hari dari tarikh notis tersebut.

[24] From the facts, the defendant applied for a scholarship and was fully on paid study leave to pursue the PhD course. The plaintiff, in turn, had paid for the defendant entire PhD education, living expenses and allowances including her salary during her four years stay in UK. The defendant did not dispute that she had received RM1,336,297.84 from the plaintiff while she was on her four years study leave for the said PhD course but contended that she is entitled to retain the sum of RM636,183 on the basis that the said sum was paid to her as salary since she consider herself working during that four years study leave.

[25] I am mindful that under s 74(1) Contracts Act 1950 which is regarded as the statutory enunciation of the rule in *Hadley and Another v Baxendale and Others* (1854) 156 ER 145 sets out the consequences for breach of contract where party who suffers by the breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage cause to him which naturally arose in the usual course of things. On this score the defendant agreed during cross examination that she ended her employment with the plaintiff on 20 February 2013 which is less than six years contrary to the cl 3.4

- A SA where she is aware the consequences of the breach. Thus, the bargain entered into by the parties that the plaintiff will fund the defendant's education and in return, the defendant will serve the plaintiff for the entire six years bond period.
- B [26] In my view when the plaintiff spent substantial amount of money including a fully paid salary for the defendant to pursue her PhD, it was the intention of the plaintiff to have qualified employee in a certain field for the benefit and interest of the plaintiff. The principal reason for the grant of
- C scholarship to the defendant is based upon a firm expectation that the defendant will be hired and she will perform her obligations for the entire period specified in the SA. On the same footing the defendant is benefited by the knowledge and expertise acquired. It is then the expectation of the plaintiff, that in return, the defendant will continue to be employed with the plaintiff for
- D a specified agreed duration and contribute her knowledge in enhancing the plaintiff's business. Thus, if the defendant does not fulfill her obligation under the SA, all the effort and expenses by the plaintiff becomes futile and failed to achieved the ultimate aim.
- E [27] It is then when the defendant decided to cease her employment with the plaintiff before the expiry of the six-year period, she is obligated to pay back all the expenses incurred for the said PhD programme as agreed in the SA. To my mind, the payback of all the expenses including the salary paid out by the
- F plaintiff to the defendant for the four years duration as damages is fair and it is not unconscionable sum compared with the loss suffered by the plaintiff arising from the breach. On the other hand, it is the plaintiff who has lost a qualified employee and the time factor to train another. On this score to allow the defendant to retain the salary of RM636,183 after having breach her obligation under the SA would mean that the defendant is to reap the benefits out of her
- G wrong doings which is contrary to law. It is a well-accepted fundamental principle of law that a party cannot benefit from his own wrong, and that where a party's act or omission has caused or contributed to the breach of contract by the other party, the first-mentioned party is not entitled to recover any damages against the second-mentioned party for the said breach (see *Gimstern*
- H *Corporation (M) Sdn Bhd & Anor v Global Insurance Co Sdn Bhd* [1987] 1 MLJ 302 at 304 (SC); and *Golden Vale Gold Range & Country Club Sdn Bhd v Hong Huat Enterprise Sdn Bhd (Airport Auto Centre Sdn Bhd & Anor, third party and another appeal)* [2008] 4 MLJ 839; [2008] 6 CLJ 31 (CA). As a direct consequence of the defendant's breached under the SA, the plaintiff is then
- I entitled to claim and to be compensated from the defendant for all the monies spend or invested.

[28] Section 5 of the Contract (Amendment) Act 1976 expressly mentioned the obligations under the SA.

Section 5: Remedy in the event of breach

Where a scholarship agreement has been broken by the scholar —

(a) if a sum is named in the agreement as the amount to be paid in case of such breach, notwithstanding anything to the contrary contained in the principal Act, the scholar and the surety shall be liable jointly and severally to pay and the appropriate authority shall be entitled to be paid the whole of such named sum whether or not actual damage or loss has been caused by such breach, and no deduction shall be made from the said named sum on account of any partial period of service performed by the scholar on completion of his course of study; or

(b) if no such sum is mentioned in the scholarship agreement, the scholar and the surety shall be jointly and severally liable to pay and the appropriate authority shall be entitled to be paid —

- (i) the whole amount expended by the appropriate authority under the agreement; and
- (ii) the whole of such further amount as it will cost the appropriate authority or another authority designated by it to engage a person with qualifications and experience similar to those which were to be obtained by the scholar to perform the services required of the scholar on the completion of his course of study for the period specified in the scholarship agreement.

[29] In this present case, it is my finding that the liability of the defendant is to pay 'the whole amount expended by the appropriate authority under the agreement' as stipulated in s 5(b)(i) Contract (Amendment) Act 1976. It is clear that the plaintiff is able to claim monies spent on the defendant under the SA.

[30] Based on the evidence adduced before me, and the submission and authorities advanced by the parties, I find that on a balance of probabilities that the plaintiff has established its case against the defendant and the defendant has failed to prove her counterclaim. Accordingly, the defendant's counter claim is dismissed. The plaintiff is entitled for the sum claimed for the amount of RM1,074,473.61 spent by the plaintiff for the defendant's PhD study as pleaded in the statement of claim with interest at the rate of 5%pa from the date of judgment until full realisation and costs of RM40,000 to be paid by the defendant to the plaintiff subject to allocator fee.

Claim allowed with costs and counterclaim dismissed.

Reported by Muhamad Azham Marwan